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**RECEIVED****American Federation of Television and Radio Artists** JUN 26 2002260 Madison Avenue  
New York, NY 10016FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARYBranch Of The Associated Actors and Artistes of America  
AFL-CIOGregory J. Hessinger  
National Executive DirectorPhone: (212) 532-0800  
Fax: (212) 532-2242  
E-mail: ghessing@aftra.com

Good afternoon, my name is Greg Hessinger and I am the National Executive Director of AFTRA, the American Federation of Television and Radio Artists. AFTRA is a national labor union that represents employees working at television and radio stations and networks nationwide. I want to thank you for giving me the opportunity to speak to you today about the new proposed EEO rules, as we at AFTRA represent those individuals whom the EEO Rules are designed to assist; those people who have had first-hand experience with the discrimination that still exists with respect to hiring, promotion, and professional advancement in the broadcasting industry.

Let me begin by saying that, as set forth in our comments filed in response to the Second Notice of Proposed Rulemaking, we endorse and applaud the Commission's re-affirmation of its anti-discrimination policy. We also support the proposed new EEO rules designed to promote broad outreach to all qualified applicants for job vacancies, although, as we describe in our written comments, we do believe that these rules need some clarification and modification in certain areas. As our suggestions are detailed in our written comments, I won't repeat them all here, but I would like to emphasize just a few of these points and respond to some of the more disturbing proposals set forth by the broadcasting associations.

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### Continued Need for EEO Rules

I would like to begin by emphasizing that it is our experience, and the real-life experience of our members who work at broadcast stations all around the country, that these proposed new EEO Rules, with their outreach and record-keeping requirements, are absolutely essential for ensuring that the broadcasting and cable industry – which is based upon the exploitation of a public resource – remains accountable and responsive to the communities that it is obligated by law to serve.

It is disturbing to us at AFTRA that certain broadcast associations are making the claim that broadcast and cable industry employers should be under no greater obligation to undertake broad outreach for job applicants than other industries, and that it is time for the Commission to relinquish its responsibility of ensuring that licensees are inclusive in their employment recruitment policies consistent with their mandate to serve the public interest. These comments are particularly disturbing in light of evidence, just discovered and revealed by the MMTC, that many of the different state and national broadcast associations had removed the "Equal Opportunity Employer ("EEO)" tags from job listings carried on their websites. Prior to now, all broadcast jobs carried the "EEO" label, and for many years, this notice has served to encourage minorities to apply for employment positions. That broadcast employers and their trade associations would go to the trouble of removing them is both appalling and alarming, particularly in combination with their proposal to limit any outreach requirement to only 50% of available jobs.

These comments are very troubling because the need for strong, meaningful and legally sound EEO rules is now greater than ever. The colossal changes that have

occurred in the industry as a result of deregulation begun in 1994 have, unfortunately, opened the door to the reemergence of old discriminatory patterns and practices. What we have seen in this new deregulated market is tremendous ownership consolidation, which has ushered in a period of severe cost cutting that has resulted in less programming and far fewer job opportunities. AFTRA has seen that with this decrease in the number of available jobs, there has been a steady increase in the number of claims and complaints of discrimination brought by our members. In contract negotiations, we have also seen employers start making proposals to limit the remedies available to our members for discrimination claims. Finally, in our general monitoring of lawsuits on this issue, we have seen a significant rise in the number of discrimination lawsuits filed by broadcast employees.

AFTRA members also report the return of insular, "word of mouth" recruitment for available jobs. The perception is that even where jobs are advertised, they are already taken by the time the applicant applies. It is alarming that rather than distancing itself from this practice, the NAB is arguing that this practice, the very anti-thesis of broad outreach, is not inconsistent with the goal of diversity. As found by dozens of courts over the years, and as AFTRA members repeatedly tell us, "word of mouth" hiring practices tend to exclude women and minorities from applicant pools and tend to discourage people from entering the profession.

Similarly, as noted in our comments, AFTRA has witnessed a decline in the participation of broadcast employers in job fairs sponsored by the various well-known minority journalists associations, such as the National Association of Black Journalists (NABJ), and the National Association of Hispanic Journalists (NAHJ). Small broadcast

entities have completely stopped attending, and even the larger companies have curtailed their participation. This observation is based not only on the experience of AFTRA members and staff who attend such conferences, but also from comments of staff of these minority journalists associations.

Notably, while the NAB attempted to refute this observation in its Reply comments by trumpeting its own satisfaction with the job fair that it sponsors, the NAB did not, and could not, dispute AFTRA's observations about the industry's general decline in interest for job fairs sponsored by organizations that serve non-majority communities.

Finally, our experience of an increase of insular and discriminatory hiring practices and a decline in outreach to minority communities has been confirmed by outside studies showing the general decline in the numbers of minorities and women in broadcasting employment and management.

#### Outreach Requirements

Next, AFTRA supports the proposed outreach requirements, but we believe that certain areas of the proposed menu options need clarification and some modification in order to be most effective for the goal of achieving broad outreach to all qualified applicants for all available industry positions.

AFTRA supports the Commission's proposal that licensees be required to send job announcements to any organization that requests them. Organizations such as local unions or the different types of journalists' associations can be an invaluable resource for people trying to break into the industry or who are seeking positions outside their home state. However, the Commission should make clear that once an organization requests

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that a station provide it with job announcements, it should become part of that station's regular distribution list. Organizations should not have to repeat their request during a station's license period.

As the Commission recognized in its Notice of Proposed Rule-making, it is also very important that any outreach efforts made by licensees pursuant to the Rules be undertaken by management representatives with substantial authority. Further, because discriminatory patterns in hiring, promoting and terminating broadcast and cable employees can be insidious and unintentional, the Commission should also suggest to licensees that they adopt internal training programs as part of their outreach and recruitment efforts. Such internal management training programs could include not only information about ways of avoiding direct forms of discrimination (such as in hiring, compensation, promotion, and termination practices), but also information about more indirect discrimination issues, including unbalanced and disparate work assignments, and other working conditions.

#### Record-keeping

We also support the Commission's proposed record-keeping rules, with some clarifications. I must emphasize that the NAB's statement that the "true aim" of the commenters, including AFTRA, is to pressure licensees to hire women and minorities at the expense of other applicants; to punish broadcasters for "alleged past discrimination," or just to amass evidence to file challenges to license renewal applications, are just plain absurd. As we stated in our comments, we see the proposed record-keeping requirements as serving two valuable goals: (1) as a simple way for licensees to demonstrate ongoing compliance with the regulatory scheme, and (2) to actively assist in promoting broad

outreach and recruitment by giving all potential job applicants vital information on how to obtain employment at networks and stations. AFTRA represents broadcast employees of both sexes and all races, and our "aim" is to see that all qualified applicants have access to all available jobs. Indeed, this is the clear intent, and would be the only effect of the proposed EEO Rules.

In order to most effectively further this goal, however, AFTRA submits three proposed modifications to the record-keeping requirements. First, a licensee's public file should contain as much information as possible that would assist potential applicants in finding employment opportunities. Specifically, licensees should be require to maintain in their public file (1) job listings; (2) copies of job announcements showing where they appeared; and (3) the list of organizations that receive job notices. Further, these documents should be placed in the public file as soon as such documents are used.

Licensees have not objected to the requirement that they keep these records, they only object to placing copies of such records in their public files. This objection rings hollow as there is no additional paperwork, but only the filing of already extant documents. Moreover, such information could be invaluable to job applicants, as potential job applicants would know that they could just look in the public file for any job vacancy, where previous vacancies were advertised, and what organizations could be of assistance in finding employment. With these records, a licensee's public file could be very useful in making this industry responsive to all the communities it is supposed to serve, and would serve to counteract the perception that jobs are filled only through "inside" connections to station management.

AFTRA also agrees with the Commission that it is statutorily mandated to collect the data requested in FCC Form 395-B on the race, ethnicity and gender of a licensee's workforce, and that the collection of this data is a necessary part of the regulatory scheme. However, contrary to a statement in the NAB's Reply comments, AFTRA does not advocate that these individual filings be made available to the public. Rather, what we believe is necessary is that the Commission use this data to compile and issue annual industry-wide summaries of this data for the public. Additionally, AFTRA believes that this critically important data would be suspect and unreliable if licensees were permitted to make their individual filings on an anonymous basis.

The importance of having reliable industry-wide statistics on the demographic make-up of the industry work-force cannot be overstated. Indeed, the NAB and others continually argue that the anecdotal evidence provided by AFTRA and others is somehow inaccurate or insufficient to show the genuine makeup of the industry. If this is true, then the industry should have no objection to submitting their data to the Commission for the Commission to aggregate and prepare industry-wide summaries for the public.

#### Sharing Jurisdiction with the EEOC

AFTRA also strongly supports the Commission's long-standing policy of maintaining its jurisdiction to consider and take action on serious complaints of employment discrimination, even if such claims are also being reviewed by the Equal Employment Opportunity Commission (EEOC). The FCC and the EEOC have successfully maintained joint jurisdiction over such claims since 1978, and in that time have only simultaneously investigated fewer than ten (10) such complaints. Although

opponents of EEO regulation have repeatedly argued against such joint jurisdiction, in EEO rule-making proceedings in 1984, 1987, 1994, 1996 and 1999, the Commission has always rejected their redundancy arguments. The Commission has correctly retained this jurisdiction because it is the only agency uniquely qualified to investigate and address complaints of employment discrimination in this industry, where such discriminatory practices or patterns may be systematic or may elude individual enforcement.

Moreover, despite some progress made by the EEOC in reducing its backlog, that agency is still facing a backlog of over 61,000 cases (both suggesting potential violations and those requiring further investigation) nationwide.

#### Age Discrimination

Finally, while age is not currently part of the Commission's anti-discriminatory mandate, the Commission has the statutory authority and responsibility to continually monitor the broadcast and cable industries to ascertain whether licensees are serving the public interest. It has become increasingly evident that there is evidence of an industry-wide practice of demoting and terminating older employees on account of age and this is clearly not consistent with the public interest.

Accordingly, AFTRA urges the Commission, consistent with its statutory authority, to investigate these complaints. Indeed, in 1969 and later in 1971, the Commission on its own initiative issued Petitions for Rulemaking for the purpose of issuing EEO rules governing discrimination on the basis of race and gender, respectively. It is now time for the Commission to review another area of potential discriminatory activity and to hold public hearings on the existence and scope of age discrimination in this industry.